STATE OF NEW HAMPSHIRE DEPARTMENT OF STATE		
IN THE MATTER OF:))) Case No: C2011000036	
Local Government Center, Inc., et al.)	

BUREAU OF SECURITIES REGULATION'S MOTION FOR ORDER REQUIRING PAYMENT OF FEES AND COSTS OR FOR SCHEDULING OF HEARING

NOW COMES Petitioner, the New Hampshire Bureau of Securities Regulation (the "Bureau" or the "Petitioner"), through counsel Bernstein, Shur, Sawyer & Nelson, P.A., and moves for an order granting the Bureau's Motion for Approval of Fees and Costs as the LGC, and the related respondents, have neither objected to the Motion for Approval filed on September 14, 2012 or participated in a mediation as described in the Order on the Merits. Order dated August 16, 2012 at 80 (providing for negotiation within 30 days after order and then submission to mediation within 45 days after order).

In support of this motion, the Bureau states as follows.

- 1. Pursuant to the August 16th Order, the Bureau submitted its detailed statement of fees and costs to counsel for the LGC. To ensure that jurisdiction was not lost, the Bureau also filed its Motion for Approval of Fees and Costs that also provided a detailed breakdown of the fees and costs sought in this matter in the gross of amount of \$571,398.86.
- 2. The LGC submitted a handful of questions to counsel for the Bureau via email on September 21, 2012. Counsel for the Bureau substantively responded via email on September 25, 2012 and asked the LGC to submit a fee and cost amount for the Bureau that the LGC thought reasonable so that the parties could negotiate or mediate any difference. The Bureau

also_suggested_a_particular_mediator_in_its_email_of_the_25th, but_solicited_alternatives_if the suggested mediator was unacceptable.

- 3. The Bureau has never received a response to the September 25th email. Negotiation of the Bureau's fee and cost request has not occurred. The parties have made no progress with mediation. The LGC has not objected to the Bureau's motion for approval of its fees and costs although far longer than ten days has elapsed.
- 4. The Bureau, in an effort to be fair, has included the email from the LGC's counsel to assist the Hearing Officer to understand the LGC's position with respect to fees and costs, even though the LGC has not filed a pleading with the tribunal.
- 5. Also, to place the Bureau's fee request in context, the Bureau also appends the LGC's press release of October 8, 2012 regarding its expenditure of \$1.9 million in legal fees in this matter.

WHEREFORE, the Bureau of Securities Regulation respectfully requests that the Presiding Officer grant the previously filed Motion for Approval of Fees and Costs without hearing, or schedule a hearing thereon.

Respectfully submitted,
The Bureau of Securities Regulations
State of New Hampshire
By its attorneys,
Bernstein, Shur, Sawyer & Nelson, P.A.

Dated this 15th day of October, 2012

/s/ Andru H. Volinsky

Andru H. Volinsky No. 2634
Roy W. Tilsley, Jr. No. 9400
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PO Box 1120
Manchester, NH 03104
603.623.8700
avolinsky@bernsteinshur.com

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I hereby certify that the foregoing motion was provided to counsel of record on the service list electronically, this 15th day of October, 2012.

/s/ Andru H. Volinsky

	W-HAMPSHIRE NT OF STATE
IN THE MATTER OF:))) Cara Nat C2011000026
Local Government Center, Inc., et al.) Case No: C2011000036

BUREAU OF SECURITIES REGULATION'S
MOTION FOR ORDER REQUIRING PAYMENT OF FEES AND COSTS
OR FOR SCHEDULING OF HEARING

Emails Concerning Fees and Costs and Suggesting Mediator

Andru Volinsky

Andru_Volinsky_[avolinsky@bernsteinshur.com]-From:

Sent: Tuesday, September 25, 2012 9:56 AM

To: Quirk, Brian M.; Steven Gordon

Benjamin Siracusa Hillman; Saturley, William C. Cc: RE: Recon ltr and fees---AV's responses to your questions of 9-21-12 included at bottom Subject:

My answers are below in this email string in your original request for clarification. They should appear in blue.

Let me know if you need more.

Also, we would agree to mediate with Melinda Gehris as the mediator, consistent with Mr. Mitchell's order. If you object to her, suggest someone else. Mediaton Suggested

Thanks,

Andru Volinsky

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From: Quirk, Brian M. [mailto:BQuirk@preti.com] Sent: Monday, September 24, 2012 10:13 AM

To: Andru Volinsky; Steven Gordon

Cc: Benjamin Siracusa Hillman; Saturley, William C.

Subject: RE: Recon ltr and fees

Andy,

As I have said we think it would be better to wait until our Motion for Reconsideration is ruled upon and the Supreme Court rules on the issues including that of fees and costs. However, in an effort to work with you, we are willing to review the issues to see if we can reach an agreement. After you provide the information we noted and requested on Friday, we will follow up with you. We will be filing objections to your motions and report later today including the motion for fees and costs. After you receive the filings, I would be happy to speak with you if you have any further questions.

Brian M. Quirk, Esq.

PretiFlaherty

From: Andru Volinsky [mailto:avolinsky@bernsteinshur.com]

Sent: Friday, September 21, 2012 3:04 PM

To: Ouirk, Brian M.; Steven Gordon

Cc: Benjamin Siracusa Hillman; Saturley, William C.

Subject: RE: Recon Itr and fees

I don't understand your email. Are you now willing to work on an amount that is agreed to before the appeal or is your position, "We think it's best to address this matter after the Supreme Court reviews the legal issues, as the issue of fees and costs may become most or the fees may be significantly different depending upon the Supreme Court's Order. "?

Andru Volinsky

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From: Quirk, Brian M. [mailto:BQuirk@preti.com]
Sent: Friday, September 21, 2012 2:02 PM

To: Andru Volinsky; Steven Gordon

Cc: Benjamin Siracusa Hillman; Saturley, William C.

Subject: RE: Recon ltr and fees

Andy,

We think it's best to address this matter after the Supreme Court reviews the legal issues, as the issue of fees and costs may become moot or the fees may be significantly different depending upon the Supreme Court's Order. That said, in an effort to further respond to your email and requests, we note and ask the following:

While we appreciate your agreeing to segregate out costs relating to the securities counts for which the Bureau did not prevail at hearing, the amount of \$22,000 relating to the securities counts is unreasonably low. The securities counts made up three of the five counts against LGC, and yet the costs that you have identified are less than 4% percent of the overall fees. Of the total bill of \$597,000, you state that only \$22,000 of the billings relate to the securities counts. This seems to be significantly understated and thus your estimate does not seem reasonable.

The LGC is not entitled to exclude costs and fees that relate both to the counts on which we were successful and to the securities counts. Thus, we included Maura's deposition time because it related to the securities and non-securities counts. It is also unreasonable to think that you can simply count the number of counts and come to any conclusions about proportionality. We excluded the purely securities related entries as we should have. If something that was purely related to securities snuck through, let me know and we'll re-visit. Otherwise, our approach is consistent with the fee award cases.

In addition, it does not appear that you segregated out fees or costs concerning the claims against the individuals for which LGC would not be responsible and on which the Bureau did not prevail at hearing. Due to the novel theories against the individuals, the time spent proceeding against them and dealing with their counsel must have been significant and, in any event, would have been an amount that should be segregated out of the overall costs.

Our position here is similar to the preceding. If you can tease out some cost or fee that is specific to the individuals that I missed, glad to reconsider, but the vast majority of the work to deal with individuals supported our efforts to establish liability of the LGC.

Along those same lines, although we appreciate your forwarding the invoices to us, we need more complete descriptions of numerous time entries to determine whether they relate to the securities counts, the claims against individuals, or the claims against our client. Because many entries are vague, we are unable to assess what counts the time entries relate to and thus unable to determine whether the fees concern our clients or not.

I can't respond to this without knowing which entries cause you concern. I don't want to overcomplicate. Perhaps if you just send back a marked up PDF of my bills I'll be able to give you more detail.

Further, we are unclear as to why LGC would be responsible for the Bureau's fees concerning its regulatory efforts with PRIMEX and SchoolCare relating to the Bureau's agreements with those risk pools. I am not referring to the overall settlement conferences at Orr & Reno.

The LGC insisted that I involve Primex and SchoolCare before it would consider settlement. I did so to meet the prerequisite that LGC set. As you know, we continued with settlement discussions with the LGC until virtually the time

of the hearing. Had I not settled with the other two, I wouldn't have met the prerequisite that you communicated to me. As well, the settlement agreements were introduced into evidence at the hearing—so must have been relevant.

Also, please confirm that the Secretary agreed to pay you \$350/hour, and whether there are any reductions to that hourly rate or any other considerations that apply to the rate. We question whether that rate is reasonable particularly due to the fact that in our experience most attorneys who have done RSA 99-D or other work for the State of New Hampshire have been requested and have agreed, as a prerequisite of retention, to reduce their normal hourly rate.

I wouldn't have submitted a fee request at \$350 if the State didn't contract for and pay \$350. I am not an insurance defense lawyer. I don't work at the rate of an insurance defense lawyer. The work in our case couldn't have been done by a slip and fall guy. I billed it, was paid at this rate and the LGC has been ordered to reimburse.

Once you have had a chance to supply responses to the above issues and requests, we will get back to you promptly.

Best regards, Brian

Brian M. Quirk, Esq. **PretiFlaherty**

From: Andru Volinsky [mailto:avolinsky@bernsteinshur.com]

Sent: Thursday, September 20, 2012 4:33 PM

To: Quirk, Brian M.; Steven Gordon **Cc:** Benjamin Siracusa Hillman **Subject:** RE: Recon ltr and fees

Please re-consider your position so that I don't have to file something saying you are uncooperative.

I ask that you: a) agree our fees are reasonable as stated, but reserve your right to contest they are due at all or to take another position if only part of the findings for the BSR are confirmed on appeal;

b) state what fees you believe are reasonable in light of the order, again reserving your right to contest that any fees are due or that the fees must be modified if not all the findings for BSR are fully confirmed appeal;

c) suggest how we are to mediate this fee and cost dispute now while Mr. Mitchell has jurisdiction.

If your position remains as stated, there is no point in my mediating with the LGC. I don't want to waste anyone's time.

The requests I am making are not unreasonable. They are how I have litigated every fee in every statutory fee shifting case I have done. The parties always agree or always litigate the fee issue as part of the underlying case. The fees are not paid until the matter is resolved on appeal and then the fee award is modified, if appropriate, to reflect the appellate decision and to add, if appropriate, fees for the appeal. The fees are then paid after the judgment becomes final. Said another way, the fees are part of the judgment. They are therefore figured before the appeal and do not become final until the appeal is completed.

Please try again.	Thanks, A
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Andru Volinsky

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From: Quirk, Brian M. [mailto:BQuirk@preti.com]
Sent: Thursday, September 20, 2012 3:16 PM

To: Andru Volinsky; Steven Gordon **Cc:** Benjamin Siracusa Hillman **Subject:** RE: Recon ltr and fees

Andy,

We have no objection with the procedure set forth by the Hearing Officer concerning the issue of the Bureau's reimbursement of its fees and costs and appreciate that you have been forthcoming with the billing records. Until the underlying issues are reviewed by the Supreme Court, however, we believe it is premature to determine what fees, if any, are reimbursable. This is because until the Supreme Court determines whether the Hearing Officer's Order was lawful, it is not clear that the Bureau has prevailed, and thus per the statute whether the Bureau would be entitled to its fees and costs. If the Supreme Court upholds the Hearing Officer's Order, LGC looks forward to discussing this issue further.

Brian

Brian M. Quirk, Esq.

PretiFlaherty

From: Andru Volinsky [mailto:avolinsky@bernsteinshur.com]

Sent: Wednesday, September 19, 2012 2:24 PM

To: Steven Gordon

Cc: Benjamin Siracusa Hillman; Quirk, Brian M.

Subject: RE: Recon ltr and fees

As I understand it, objections are not required unless invited and so currently do not intend to file an objection to the motion to reconsider. We will object to your Motion for Stay and we do hope to hear from your about our fees.

Α

Andru Volinsky

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From: Steven Gordon [mailto:sgordon@Shaheengordon_com]

Sent: Wednesday, September 19, 2012 2:14 PM

To: Andru Volinsky

Cc: Benjamin Siracusa Hillman; Brian M. Quirk

Subject: Re: Recon ltr and fees

Andy

Are you filing an objection to our notion for reconsideration?

On Sep 19, 2012, at 11:37 AM, "Andru Volinsky" < avolinsky@bernsteinshur.com > wrote:

Sent from my iPhone

Begin forwarded message:

	W HAMPSHIRE NT OF STATE
IN THE MATTER OF:))) Cara Nay C2011000026
Local Government Center, Inc., et al.) Case No: C2011000036

BUREAU OF SECURITIES REGULATION'S MOTION FOR ORDER REQUIRING PAYMENT OF FEES AND COSTS OR FOR SCHEDULING OF HEARING

LGC's October 8, 2012 Press Release \$1.9 million in legal fees expended



FOR IMMEDIATE RELEASE

October 8, 2012

CONTACT:

Laura Simoes, 603/230-3398

lsimoes@nhlgc.org

Local Government Center Announces Update of Legal Fees in its Administrative Hearing Process

CONCORD, NH – Today, the Local Government Center (LGC) announced the total amount spent on defending the Bureau of Securities Regulation (BSR) administrative proceeding totals approximately \$1.9 million in legal expenses and associated costs.

General Counsel for LGC David Frydman explained, "While this is certainly a large expense, please note that a significant portion of the expense is due to the BSR's decision to name not only LGC and its Risk Pool subsidiaries as respondents, but to bring the case against a total of 21 different parties, including eight separate corporate entities, 11 past or present volunteer board members, one former employee and one present employee. All of the entities and individuals were entitled to a legal defense of the claims, which necessitated the involvement of many separate attorneys to protect against potential conflicts of interest between them. The average defense costs amount to about \$92,000 per named respondent. Even if all the related LGC entities were considered a single respondent, the average cost per respondent is still only \$138,000. In contrast, the BSR's legal costs, as one party, amounted to \$571,000."

In the end, all of the 13 named individuals were either released or dismissed without ever being found to have violated the law. Similarly, of the six original counts brought by the BSR against the respondents, the hearing officer found against the LGC in only two of them. Three of the remaining counts were found not to have merit by the hearing officer, and the fourth was withdrawn, after the respondents argued for its dismissal.

"It is unfortunate that the proceeding resulted in the need to spend so much money, but the expenditure of these defense costs were needed to protect LGC, the other corporate entities and the many named individuals against the numerous groundless allegations that were eventually dismissed without any findings of liability. It would have been a much more efficient use of public resources, had administrative rules been adopted to clarify the requirements on risk pools or if the case had been streamlined from the start, but that was not in LGC's control," Frydman continued.

LGC has received \$250,000 to date from its insurance carriers to cover some of these defense costs. "LGC firmly believes that most, if not all, of these defense costs will be reimbursed by its outside insurance carriers. Unfortunately, LGC has needed to file suit against them to obtain such reimbursement and that case is still in litigation," added Frydman.

The New Hampshire Local Government Center (LGC) is a nonprofit organization governed by an active board of directors comprising municipal, school and county representatives, including employees, management and elected officials. Its mission is to strengthen the quality of member governments and the ability of their officials and employees to serve the public. For more information, visit www.nhlgc.org.